

No. 08-3839

[illegible]

Submitted: February 23, 2010
Filed: March 1, 2010

Before BYE, RILEY, and SHEPHERD, Circuit Judges.

PER CURIAM.

Inmate Lawrence Martin Edwards appeals following the district court's¹ entry of final judgment in his 42 U.S.C. § 1983 action. The only issue Edwards raises in his appeal brief is whether summary judgment was properly granted to defendants Chuck Dwyer and Tori Green. See Fair v. Norris, 480 F.3d 865, 869 (8th Cir. 2007) (waiver of claims on appeal). Having conducted de novo review, see Popoalii v. Corr. Med. Servs., 512 F.3d 488, 499 (8th Cir. 2008), we agree with the district court that the record showed Edwards had not administratively exhausted his claims against Green and Dwyer, and thus that dismissal was required. See Jones v. Bock, 549 U.S. 199, 211, 219-20 (2007) (unexhausted claims cannot be brought in court or considered); see also Moody v. St. Charles County, 23 F.3d 1410, 1412 (8th Cir. 1994) (in seeking to defeat summary judgment, party must substantiate allegations with sufficient probative evidence permitting finding in his favor based on more than conjecture or speculation). Accordingly we affirm, see 8th Cir. R. 47B, although we modify the dismissal of the claims against Green and Dwyer to be without prejudice, see Calico Trailer Mfg. Co. v. Ins. Co. of N. Am., 155 F.3d 976, 978 (8th Cir. 1998). We also deny Edwards's pending motions.

¹The Honorable Charles A. Shaw, United States District Court for the Eastern District of Missouri.